

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-1474
No. 76-1480

United States Court of Appeals
for the Second Circuit. *B*
P/S

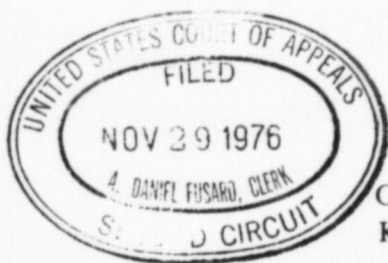
UNITED STATES OF AMERICA,
APPELLEE,

v.

JOHN LE CONCHE,
DEFENDANT, APPELLANT.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT.

Brief and Appendix for Defendant-Appellant.



CHARLOTTE ANNE PERRETTA,
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BATEMAN & SLADE, INC.

BOSTON, MASSACHUSETTS.

PAGINATION AS IN ORIGINAL COPY

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United States Court of Appeals for the Second Circuit.

No. 76-1480.

UNITED STATES OF AMERICA,
APPELLEE,

v.

JOHN LE CONCHE,
DEFENDANT, APPELLANT.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT.

Brief and Appendix for Defendant-Appellant.

Issue for Review.

Whether Title 26 U.S.C. § 4424 is co-extensive with the
defendant's Fifth Amendment privilege.

Statement of the Case.

On May 14, 1976, an information was filed against John Le
Conche, charging that he was in the business of receiving and

accepting wagers without having paid the special occupational tax, required by 26 U.S.C. §§ 4401, 4411, all in violation of 26 U.S.C. § 7262 (App. 1, 3).

On June 8, 1976, defendant filed a motion to dismiss asserting his Fifth Amendment privilege as a bar to prosecution of the information (App. 1, 4). On September 21, 1976, the motion was denied; defendant entered a plea of *nolo contendere*, and was found guilty by the court (App. 2, 5). Thereafter a notice of appeal was timely filed (App. 2, 6).

The issue raised herein is a question of law and no recitation of the evidence is required for resolution of the matter.

Argument.

TITLE 26 U.S.C. § 4424 IS NOT CO-EXTENSIVE WITH THE DEFENDANT'S FIFTH AMENDMENT PRIVILEGE.

A. Introduction.

Defendant, by his motion to dismiss (App. 4), timely asserted his Fifth Amendment protections in defense of the information against him. *Marchetti v. United States*, 390 U.S. 39 (1968); *Grosso v. United States*, 390 U.S. 62 (1968); and *Garner v. United States*, 424 U.S. 648 (1976).

It is the position of the Government that the holdings of *Marchetti* and *Grosso* are no longer applicable in that the dangers recognized by the Supreme Court in those cases have been removed by the immunity provisions of Title 26 U.S.C. § 4424.

In reliance upon *Kastigar v. United States*, 406 U.S. 441 (1972), defendant maintains § 4424 is insufficient protection and he may assert his Fifth Amendment privilege:

"If, on the other hand, the immunity granted is not as comprehensive as the protection afforded by the privilege, petitioners were justified in refusing to answer. . . . *McCarthy v. Arndstein*, 266 U.S. 34, 42 (1924)." *Kasiggar*, *supra*, 406 U.S. at 449.

A close analysis of the Internal Revenue Code and Internal Revenue Regulations substantiates defendant's assertion of the Fifth Amendment privilege.

B. *Statutory Analysis.*

Section 4424, the immunity provision here disputed, is divided into three paragraphs. Paragraph (a) grants no immunity whatsoever to the taxpayer; rather, it establishes a broad rule that government employees having access to the records which the taxpayer is required to file shall not disclose the contents thereof to anyone.

Paragraph (b), like (a), prohibits disclosure, except to the extent necessary to enforce the Internal Revenue Code, administratively, civilly and criminally. Paragraph (b)(2) would superficially appear to immunize, but a close scrutiny indicates it does not sufficiently do so. The immunity conveyed in clear terms by paragraph (b)(2) is granted only to those who filed the required documents prior to the enactment of § 4424: "[A]ny document or information so disclosed may not be — . . . (2) used, directly or indirectly, in any criminal prosecution for any offense occurring *before the date of enactment* of this section." (Emphasis supplied.)

Thus, (b)(2) protects those who previously filed. Paragraph (b)(1) cannot be relied upon as protecting filers *after* the effective date; (b)(1) conveys no immunity to the taxpayer — it merely prohibits disclosure.

The distinction between prohibition and immunization is vital, the latter being the only protection to the taxpayer as it is an evidentiary exclusion. The prohibition might require departmental discipline of employees if breached, see 26 U.S.C. § 7214(3), but it affords no protection to the taxpayer.

Paragraph (c) affords use immunity to a taxpayer, but it limits itself to prohibiting use of the documents, as evidence, which are specified within the paragraph itself, and which are in the taxpayer's possession.

The critical distinction between paragraphs (a) and (b), and (c), is clear: documents in the possession of the government, (a) and (b), cannot be disclosed, whereas use immunity is conveyed only in relation to documents possessed by the taxpayer.

The documents specified in paragraph (c)(1) and (2) are extremely limited and in no way protect the taxpayer against use of documents which he must maintain pursuant to the Code and Regulations: "Here, as in *Marchetti*, the statutory obligations are directed almost exclusively to individuals inherently suspect of criminal activities." *Grosso, supra*, 390 U.S. at 68. Title 26 U.S.C. § 4423 states in full:

"Notwithstanding section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter."

Section 4403 of Title 26 provides in full:

"Each person liable for tax under this subchapter [subchapter A, chapter 35] shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a)."

Sections 44.4403-1 and 44.6001-1, Internal Revenue Regulations, set forth what the daily records, for purposes of the return, must contain. While these records are not filed, they must be maintained in the event of an inspection and to substantiate the return. The daily records require a detailed account of each wager accepted, its classification, and amount, among other things, and the records must be kept at the taxpayer's principal place of business. Anyone who fails to keep these records is subject to criminal sanctions. See 26 U.S.C. § 4203.

In *Marchetti, supra*, 390 U.S. 39, and *Grosso, supra*, 390 U.S. 62, the Supreme Court did not condone gambling nor extend offensive protection to such activity. Rather, it noted that no other class of persons had been so singled out by the Internal Revenue Service to furnish evidence against themselves and open the floodgate to criminal proceedings based upon the evidence so furnished. Section 4424 does not remove this danger; it perhaps, and at best, limits the danger, but this is not sufficient. *Kastigar, supra*, 406 U.S. 441.

C. Waiver By Non-Assertion.

Defendant contends that if he were to comply with the filing requirements of § 4411 and the previously cited Internal Revenue Regulations, all in reliance upon § 4424, he would waive his Fifth Amendment privilege in relation to other filing mandates and would clearly incriminate himself.

In *Garner, supra*, 424 U.S. 648, the taxpayer filed his income tax returns setting forth required information which indicated his income was derived from gaming. These returns were introduced into evidence against him at trial on gambling conspiracy charges. He objected on the basis of his Fifth Amendment privilege. The court rejected the claim and held the tax returns admissible:

"In summary, we conclude that since *Garner* made disclosures instead of claiming the privilege on his tax returns, his disclosures were not compelled incriminations. He therefore was foreclosed from invoking the privilege when such information was later introduced as evidence against him in a criminal prosecution." *Garner, supra*, 424 U.S. at 665.

Indeed, *Garner* repeats throughout its decision that if the privilege is not claimed from the outset, it is lost forever.

While the occupation tax is directly aimed at the gambler and the income tax is clearly not, serious problems nonetheless arise when the provisions regarding the two taxes are considered.

Under *Garner*, the taxpayer must file his income tax return, but he must claim his privilege on the return. In gaming situations it is submitted that the privilege must be claimed in relation to the occupation tax or it is lost forever, as in *Garner*.

As noted, § 4424 does not forbid disclosure to enforce internal revenue laws. Section 4403 mandates that detailed information be kept. Sections 7602 and 4423 allow inspection and examination of these records. To insure compliance with inspection requests, the Internal Revenue has the power to summons and seek contempt citations for non-compliance. See §§ 7603, 7604. Thus, when the privilege is not claimed and the occupation tax is paid and daily detailed records maintained, the taxpayer is faced with the problem of his income tax return, as in *Garner*. Prior to § 4424, the taxpayer could claim the privilege, compute his tax as all other taxpayers, and comply with the law. Now, however, if the taxpayer does not claim his privilege from the outset, and pays the occupation tax, he cannot claim the privilege on his

income tax return. He could be deemed to have waived the privilege; he could be summonsed and questioned relative to his § 4403 records and his income tax return could be completed by the Internal Revenue Service on the basis of records in its possession, supplied by virtue of § 4424 and usable to enforce the revenue laws. Section 6020 provides in full:

"(a) If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary or his delegate may prepare such return, which, being signed by such person, may be received by the Secretary or his delegate as the return of such person.

"(b) Execution of Return by Secretary. (1) Authority of Secretary to execute return — If any person fails to make any return (other than a declaration of estimated tax required under section 6015) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or his delegate shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

"(2) Status of Returns — Any return so made and subscribed by the Secretary or his delegate shall be prima facie good and sufficient for all legal purposes.

Defendant submits this situation is hardly comparable to that guaranteed by his Fifth Amendment rights and recognized in *Marchetti* and *Grosso*.

Garner required that, if protection is sought, it be done at the outset. The dangers inherent in compliance with § 4424 are not contrived or fanciful. They are substantial and real,

and defendant has sought protection by claiming the privilege in the manner allowed by the holdings of *Marchetti* and *Grosso*.

Conclusion.

For all the above discussed reasons, it is respectfully requested that this court reverse the judgment and order of the court below denying defendant's motion to dismiss.

Respectfully submitted,

CHARLOTTE ANNE PERRETTA,
KEATING & PERRETTA,

15 Congress Street,

Boston, Massachusetts 02109.

(617) 227-7575

Addendum.

INTERNAL REVENUE REGULATIONS.

§ 44.4403-1 Daily record

Every person liable for tax under section 4401 shall keep such records as will clearly show as to each day's operations:

(a) The gross amount of all wagers accepted;

(b) The gross amount of each class or type of wager accepted on each separate event, contest, or other wagering medium. For example, in the case of wagers accepted on a horse race, the daily record shall show separately the gross amount of each class or type of wagers (straight bets, parlays, "if" bets, etc.) accepted on each horse in the race. Similarly, in the case of the numbers game, the daily record shall show the gross amount of each class or type of wager accepted on each number.

For additional provisions relating to records, see §§ 44.6001 and 44.6001-1.

Added T.D. 6370, Apr. 4, 1959, 24 F.R. 2614.

§ 44.6001-1 Record requirements

(a) **In general.** (1) In addition to all other records required pursuant to § 44.4403-1, every person required to pay tax under section 4401 shall keep such records as will clearly show as to each day's operation:

(i) Separately, the gross amount of wagers —

(a) Accepted directly by the taxpayer or at any registered place of business of the taxpayer (other than laid-off wagers),

(b) Accepted for his account by agents at any place other than a registered place of business of the taxpayer (other than laid-off wagers), and

(c) Accepted as laid-off wagers from persons subject to the tax on wagers;

(ii) With respect to wagers laid off with others, the name, address, and registration number of each person with whom the laid-off wagers were placed, and the gross amount laid off with each such person, showing separately the gross amount of laid-off wagers with respect to each event, contest, or other wagering medium, as, for example, the gross amount laid off on each horse in a race; and

(iii) The gross amount of tax collected from or charged to bettors as a separate item.

(2) If a taxpayer has any agents or employees receiving wagers on his behalf, he shall maintain a separate record showing the name and address of each agent or employee, the period of employment, and the number of the special tax stamp issued to each such agent or employee.

(3) A duplicate copy of each return required by § 44.6011(a)-1 shall be retained as part of the taxpayer's records.

(b) Records of agent or employee. Every person who is engaged in receiving for or on behalf of another person (at any place other than a registered place of business of such other person) wagers of a type subject to the tax imposed by section 4401 shall keep a record showing for each day (1) the gross amount of such wagers received by him, (2) the amount, if any, retained as a commission or as compensation for receiving such wagers, and (3) the amount turned over to the person on whose behalf the wagers were received, and the name and address of such person.

(c) Record of claimants. Any person claiming a credit or refund shall keep a complete and detailed record of each overpayment and of each laid-off wager for which credit is taken or refund is claimed, including a copy of the certificate required under paragraph (d) of § 44.6419-2.

(d) **Place for keeping records.** Every person required to pay the tax imposed by section 4401 shall keep or cause to be kept, at his office or principal place of business, or, if he has no office or principal place of business, at his residence or some other convenient or safe location, all such records as are required pursuant to paragraphs (a) and (c) of this section and §§ 44.4403 and 44.4403-1.

(e) **Period for retaining records.** All records required by the regulations in this part shall at all times be available for inspection by internal revenue officers. Records required by § 44.4403-1 and by paragraph (a) of this section shall be maintained for a period of at least three years from the date the tax became due. Records required by paragraph (b) of this section shall be maintained for a period of at least three years from the date the wager was received. Records required by paragraph (c) of this section shall be maintained for a period of at least three years from the date any credit is taken or refund is claimed.

Added T.D. 6370, Apr. 4, 1959, 24 F.R. 2614, and amended T.D. 6568, Aug. 15, 1961, 26 F.R. 7545.

§ 44.6011(a)-1 Returns

(a) **In general.** Every person required to pay the tax on wagers imposed by section 4401 of the Code shall make for each month, from the daily records required by §§ 44.4403-1 and 44.6001-1, a return on Form 730 in accordance with the instructions and regulations applicable thereto. A return shall be made for each month whether or not liability has been incurred for that month. If the taxpayer ceases operations which make him liable for the tax, the last return shall be marked "Final Return".

(b) **Return on Form 11-C.** Every person required to pay the special tax imposed by section 4411 shall make a return on Form 11-C in accordance with the instructions and regulations applicable thereto.

Added T.D. 6370, Apr. 4, 1959, 24 F.R. 2614.

§ 44.6071-1 Time for filing return

(a) **Return on Form 730.** Each return required to be made on Form 730 pursuant to § 44.6011(a)-1 shall be filed on or before the last day of the first calendar month following the period for which it is made. For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 7503.

(b) **Return on Form 11-C.** (1) The first return required to be made on Form 11-C shall be filed to cover the period beginning with the first day of the calendar month in which a person engages (or expects to engage) in activities which make him liable for the special tax imposed by section 4411 and ending with the following June 30. Thereafter, each return required to be made on Form 11-C shall be filed on or before July 1 to cover a 1-year period (beginning July 1 and ending June 30 of the following calendar year) during which taxable activity continues.

(2) For additional provisions relating to the return on Form 11-C, see § 44.4412-1 and §§ 44.4901 to 44.4905-3, inclusive.

Added T.D. 6370, Apr. 4, 1959, 24 F.R. 2614.

§ 44.6091-1 Place for filing returns

(a) **In general.** A return on Form 730 or Form 11-C shall be filed with the district director of internal revenue for the district in which is located the legal residence or principal place of business of the person making the return. If such person has no legal residence or principal place of business in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (b) of this section.

(b) **Returns of individuals outside the United States.** The returns on Form 730 and Form 11-C of individuals (whether citizens of the United States, citizens of possessions of the United States, or aliens) outside the United States having no legal residence or principal place of business in any internal revenue district shall be filed with the Director, International Operations Division, Internal Revenue Service, at Washington 25, D.C.

Added T.D. 6370, Apr. 4, 1959, 24 F.R. 2614.

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App. 1

06 205 2 <small>U.S. Title Section</small>	IE CONCHE, JOHN <small>PLEASE PRINT NAME</small>	5 14 <small>ARREST NO.</small>	76 62 1 <small>U.S. CASE NO.</small>
26:7262 failure to pay special occupational tax to IRS prior to engaging in business of receiving and accepting wagers.		1 <small>ORIGINAL COUNTS</small>	
II. KEY DATES & INTERVALS			
ARREST or U.S. Custody Begun Summons Served First Appearance	INDICTMENT High Risk Date Indict Waived In Charging District Information X 5/14/76 Superseding Indictment Indictment	ARRAIGNMENT Trial Set For Trial Began Trial Ended 5/24/76 9/21/76	TRIAL Verdict Disposition at Charge 9/21/76 Convicted Acquitted Dismissed On Government Motion
SENTENCE Bail - Release Bail Not Made Status Changed (See Circuit)			
MAGISTRATE Search Warrant Issued Summons Served Arrest Warrant Issued COMPLAINT OFFENSE (in Complaint)			
U.S. Attorney or Asst. Peter C. Dorsey, US Atty. Paul E. Coffey, Sp. Atty.		ATTORNEYS Charlotte Anne Perretta 15 Congress St. Boston, Mass. 02109 617-227-7575	
		MAILING ADDRESS c/o Michael Robbin 111 Founders Pl. E. Hfd. 06108	

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
1976			
5/14		Information, filed.	
5/17		Summons issued and handed US Marshal.	
5/17		Motion to Remand to U.S. Magistrate for Trial Under Rule 9(d), F.R.Cr.P., filed.	
5/21		Marshal's executed return, filed. (Summons)	
5/24		Appearance filed by Charlotte Anne Perretta. PLEA of not guilty entered. (Clarie, J.) Two wks. for motions - one wk. for Govt. to respond. (Clarie, J.)	
6/4		Appearance of Charlotte Anne Perretta, filed.	
6/8		Motions for Bill of Particulars; For Discovery; For Exculpatory Evidence; To Dismiss; For Name of Informant; For Time in Which to File Supporting Memoranda of Law, filed.	
6/11		Request of U.S. to Withdraw Motion to Remand, filed.	
6/16		Memorandum of Law in Support of Motion to Dismiss, filed.	
6/24		Notice of Readiness, filed by Govt.	
7/2		Motion To Compel, filed.	
7/3		Court Reporter's notes & Sound Recordings of Proceedings held on May 24, 1976, filed in Hfd. (Sperber, R.)	

FORM AO 258

Continued

BEST COPY AVAILABLE

App. 2

1976
7/12 Hearing on Motion To Dismiss - Dec. Reserved.
Govt. to File Brief by 7-16. Deft. to file brief
by 7-21-76. (Clarie, J.)
7/15 Response of U.S. to Motion To Dismiss, filed.
7/15 Response of U.S. to Motion To Compel, filed.
7/22 Motion For Enlargement of Time in Which to File
Brief, filed.
7/27 Endorsement entered and filed on Motion For
Enlargement of Time... "7/27/76. Motion granted as
requested. So Ordered." (Clarie, J.) M. 7-27-76.
Copies sent to counsel of record.
7/30 Court Reporter's notes of Proceedings held on
July 12, 1976, filed in Hfd. (Sperber, R.)
9/13 Hearing on Motion to Compel - Over to 9-20-76.
(Clarie, J.)
9/20 Hearing on Motion to Compel - Memorandum of Law
in Support of Motion to Compel, filed by deft.
Second Memorandum of Law in Support of Motion to
Dismiss, filed by deft. Decision Reserved.
(Clarie, J.)
9/20 JURY ASSG. LIST - To go off calendar until pending
motions have been decided. (Clarie, J.)
9/21 Motion to Dismiss - Denied. PLEA of nolo contendere
entered to one count. Court makes finding of guilty.
Pre-sentence report waived. DISPOSITION - fined
\$1000.00 committed. Execution of payment of fine is
stayed 10 days. (Clarie, J.)
9/22 Judgment Order, filed. (Clarie, J.) M.9-23-76.
9/28 Motion For Stay of Execution On Payment of Fine
Pending Appeal, filed.
9/28 Notice of Appeal, filed. Copies mailed to Attys.
Coffey and Perretta.
9/29 Certified copy of Notice of Appeal and Docket
entries mailed to Clerk, USCA.
9/29 Endorsement entered and filed on Motion for Stay
of Execution on Payment of Fine pending Appeal, "
"9/29/76 Motion granted." (Clarie, J.) m-9/29/76 Copies
disbursed to counsel of record. Two attested copies
handed US Marshal.
10/8 Acknowledgment from USCA on documents mailed on
September 29, 1976, filed.

CASE AND RECEIPTED DOCUMENTS					
DATE	RECEIPT NUMBER	CO NUMBER	DATE	RECEIPT NUMBER	CO NUMBER

B

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App. 3

Legal office

Walter J. [illegible]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. :

CRIMINAL NO. H-76-62

JOHN LE CONCHE :

INFORMATION

The United States Attorney charges:

COUNT ONE

That during the months of August, September, October, and
December, 1975 the defendant, JOHN LE CONCHE,
whose residence was in the District of Connecticut, did at a place of business
in Hartford County, Connecticut, in the District of Connecticut, engage in the
business of receiving and accepting wagers, as defined in Section 4421(1) and
(2) of Title 26, United States Code, whereby he became liable for the special
occupational tax imposed by Section 4411, Title 26, United States Code; that
prior to engaging in said business he was required by Section 4401 of Title
26, United States Code, and applicable regulations, to pay the special oc-
cupational tax imposed by Section 4411 of Title 26, United States Code, to
the District Director of Internal Revenue, Hartford, Connecticut; and that
prior to engaging in said business he failed to pay said special occupational
tax to the District Director, or to any other proper officer of the United
States.

In violation of Section 7262, Internal Revenue Code; 26 United
States Code, 7262.

UNITED STATES OF AMERICA

[Signature]
PAUL C. DOCKEY
United States Attorney

BY: PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)	CRIM. NO. H-76-62
VS.)	<u>MOTION TO DISMISS</u>
JOHN LE CONCHE)	

Now comes the defendant, John LeConche, in the above-captioned matter, and moves that the Information be dismissed on the following grounds:

1. The Information alleges a violation of 26 U.S.C. §7262, on the basis of failure to comply with the mandates of 26 U.S.C. 554421(1) and (2) and 4411.

2. The defendant asserts his rights as guaranteed to him by the Fourteenth and Fifth Amendments to the United States Constitution, as delineated in Marchetti v. United States, 390 U.S. 39 (1968), and relies upon said rights as an affirmative defense to this Information.

WHEREFORE, it is respectfully requested that this Information be dismissed.

By:

Charlotte Anne Perretta
KEATING, PERRETTA & PIERCE
c Michael Robbins, Esq.
Suite 1406
111 Founders Plaza
East Hartford, Connecticut 06108
(549-5300)

CERTIFICATE OF SERVICE

I, Charlotte Anne Perretta do hereby certify that a copy of the Within Motion to Dismiss was this day mailed to Special Attorney Paul E. Coffey, U.S. District Courthouse, 450 Main Street, Hartford, Connecticut 06103.

Dated this 7th day of June, 1976, at Boston, Massachusetts.

Charlotte Anne Perretta

App. 5

United States of America vs.

United States District Court for

DEFENDANT } JOHN, Z. CONCHE } DISTRICT OF CONNECTICUT

DOCKET NO. Criminal H-76-62

JUDGMENT AND PROBATION/COMMITMENT ORDER

IN the presence of the attorney for the government the defendant appeared in person on this date MONTH DAY YEAR
September 21, 1976

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
☒ WITH COUNSEL Charlotte Anne Perretta, Esq.
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☒ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY, by the Court.

Defendant has been convicted as charged of the offense(s) of violation of Title 26, United States Code, Section 7262 (prior to engaging in business of receiving and accepting wagers, failed to pay special occupational tax to the Internal Revenue Service) as charged in one count.

SENTENCE OR PROBATION ORDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby ~~convicted and sentenced to pay a fine of One Thousand Dollars (\$1000.00).~~ fined One Thousand Dollars (\$1000.00). Defendant is to stand committed until payment of fine or until he is otherwise discharged as provided by law. Execution on payment of fine is hereby stayed ten (10) days.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, refuse or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT OR PROBATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

DO BY

CERTIFIED AS A TRUE COPY

THIS DATE

[Signature]
Hon. Charles J. Clark, Chief Judge 9/22/76

App. 6

FILED

SEP 28 3 12 PM '76

U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

JOHN LE CONCHE

CRIM. NO. H-76-62

NOTICE OF APPEAL

Now comes the defendant, John Le Conche, in the above-numbered information and files his Notice Of Appeal from the finding of guilty entered by this Court on September 21, 1976, said appeal claimed to the United States Court of Appeals for the Second Circuit.

By his attorney

By

Charlotte Anne Perretta
Charlotte Anne Perretta
c/o Michael Robbins
Suite 1406
111 Founders Plaza
East Hartford, CT

CERTIFICATE OF SERVICE

I, Charlotte Anne Perretta, hereby certify that a copy of the within Notice Of Appeal was this day mailed, first class, postage pre-paid, to Special Attorney Paul E. Coffey, U.S. District Courthouse, 450 Main Street, Hartford, Connecticut 06103.

Charlotte Anne Perretta
Charlotte Anne Perretta

Dated this 23rd day of September, 1976, at Boston, Massachusetts.

BATEMAN & SLADE, INC.
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Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, NY 10007

Date: November 29, 1976

Dear sir,

Herewith are 25 copies of the brief and
appendix (bound together) for:

Appellant

No. 76-1480

UNITED STATES OF AMERICA

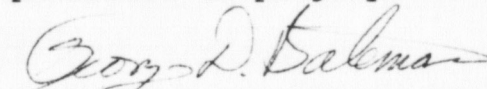
v.

JOHN Le CONCHE

We certify that we have served two copies
of the brief and appendix upon:

Paul E. Coffey, Esq., Special Attorney,
Department of Justice, U.S. District
Courthouse, 450 Main Street, Hartford,
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Signed under the penalties of perjury:


BATEMAN & SLADE, INC.

cc. Charlotte Anne Perretta, Esq.